IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
APPELLATE SIDE.

CRIMINAL APPEAL NO. 153 OF 1997

Vijay Gokul Mhaske ..... Appellant

versus

The State of Maharashtra ..... Respondents

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Shri S.P. Mundargi for the appellant
Shri A. M. Shringarpure APP for the State.

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CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.

DATED : 25TH JULY, 2005

ORAL JUDGEMENT (Per Palshikar, J.) :

1. Being aggrieved by the judgment dated 18-2-1997 passed by the Additional Sessions Judge, Pune in Sessions Case No. 462 of 1993 appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have srcutinised the entire record, and re-

appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution story stated briefly is that deceased Mahadu was resident of Chakan, Ambethan chowk. On 21-4-1993 at 9.00 a.m. his brother Ananda Nivrutti Shevkari told him that the deceased should accompany the loaded truck of coal and after unloading the same he should buy a plough for their tractor, for which purchase an amount of Rs. 16,000/- was paid to the deceased. Accordingly all of them went to Hingawadi and accused alone left the place. He told the truck driver Lahu to reach at Dangi Square around 2.00 p.m. after unloading the truck. Accordingly, P.w. 9 Lahu went to Dangi chowk where he was met by accused who came on a motor cycle of the deceased. Then at Hadapsar the plough was purchased and the deceased told the truck driver that he would come in the night and they should go to the village. On the next day police found a dead body on the road. They investigated and found that the body was of the deceased and they arrested and prosecuted the accused who was last seen together with the deceased. The prosecution examined 15 witnesses to prove its case and the learned trial Judge on appreciation of this evidence came to the conclusion of guilt and consistent with that conclusion, he convicted the accused under section 302 of IPC. He also convicted the accused under section 394 of IPC to suffer seven years R.I. and ordered that both the sentences to run conrrently. This appeal is directed against that conviction.

4. Of the 15 witnesses examined by the prosecution, P.w. 4 Shevkari, P.w. 6 Lalbi Shaikh, P.w. 8 Shinde and P.w. 9 Nehare are the witnesses who have last seen the accused together with the victim. P.w. 10 Sarde and P.w. 11 Kamble have also turned hostile. P.w. 2 Jadhav has proved the recovery of the gold ring belonging to the victim. P.w. 5 Bhugbal and P.w. 7 Pawar have proved the recovery of cash. P.w. 12 Fulpagar, the investigating officer has proved the documents executed by him. It was on the basis of these evidence that the learned trial Judge as aforesaid convicted the accused/appellant.

5. The prosecution has proved by examining the doctor P.w. 15 Dr. Madne that the death was homicidal in nature. This doctor has conducted the post mortem and has stated proving the post mortem report, the internal and external injuries caused to the victim and has deposed that the victim died of multiple injuries. The prosecution has thus proved the homicidal death of the victim.

6. The prosecution has by examining P.ws. 4, 6, 8 and 9 proved that the accused and victim were last seen together. It is pertinent to note that these two persons, i.e. accused and victim, after having consumed alcohol had visited a den of the prostitutes and the evidence of that brothel keeper proved that the accused and victim were drunk and victim had a lot of cash with him and he was wearing a gold ring. Blood stained clothes of the accused are also recovered.

The recovery is duly proved. Recovery of money and ring is also duly proved. P.w. 2 is the witness who proves the recovery of ring and P.ws. 5 and 7 are the witnesses who proved the recovery of cash. A scrutiny of the testimony of these three witnesses i.e. P.ws. 2, 5 and 7 discloses that their evidence has a ring of truth and there is no reason why they should voluntarily recovered either the ring or the cash. The recovery further proves that the money recovered from the accused was the money paid to the victim by his brother P.w. 1. He has identified the notes in court because of his habit being a trader of writing the number of notes and total sum of money on the note.

7. P.w. 6 is Lalbi Shaikh the brothel keeper. She has deposed that she told the accused that deceased Mahadu had lot of cash and gold ring on him and therefore the accused should take care of the victim. She then identifies the ring before the court as those worn by Mahadu when she saw him last at her brothel. It is this proved by the prosecution that the accused and the victim were last seen together by P.w. 6 in her brothel.

8. P.w. 9 Lahu was the truck driver and he had narrated the complete incident of how he took the truck along with the accused for unloading the coal and purchase of plough and how he waited at Dangi chowk and how he returning back with the victim. P.w. 4 Ganesh is the son of victim Mahadu. He has also deposed how he was accompanying the deceased and how the entire

transactions took place till the deceased left in the company of the accused.

9. According to us, therefore, the prosecution has successfully proved that (1) the accused and the victim were last seen together, (2) that there is recovery of money and rings belonging to the victim at the instance of the accused, (3) recovery of blood stained clothes and thus according to us, the prosecution has proved the entire chain of circumstances. The prosecution has also proved that the victim left the house with the truck and his son and alongwith driver Lahu. They reached Hingwadi where the victim left the truck, asking the truck driver to be present at Dangi chowk. Son of the victim and the driver came at 2.00 p.m. near the Dangi chowk. Thereafter all of them was going to Pune side and accused and the victim were on the motor cycle and was following the truck. Then it is proved how the plough was purchased, how the victim and accused was following and how the victim asked them to go to the village and he would follow later. Then there is evidence of liquor vendor, who says that he sold bear to the victim and the accused. Consumption of liquor is proved, their visit to brothel is proved, and the mentioning of the rings and money by the brothel keeper to the accused is also proved. Therefore there is ring in the chain of circumstances, which the prosecution has proved. We therefore confirm the finding of guilt as recorded by the learned trial Judge. According to us, there is no reason to interfere with the order of conviction. It is a well reasoned order. The evidence is properly marshalled. The accused is therefore found guilty of

both the offences under secs. 302 and 394 of IPC. In the result, therefore, the appeal fails and it is dismissed. The accused is on bail during the pendency of the appeal. He is granted one month's time to surrender to his bail. If he does not so surrender, immediate action be taken by the concerned police station to see that the accused is arrested and handed over to appropriate jail authority for undergoing the sentence imposed by the learned trial Judge and confirmed by us.

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